



Policy Statement 2007-6

DEPARTMENT POLICY CONCERNING PRE-JUDGMENT SETTLEMENT AGREEMENTS UNDER § 26-2229A(3)(d) OF THE IDAHO COLLECTION AGENCY ACT

ISSUE: Collecting, or Attempting to Collect Attorney Fees, Costs, or Other Charges Against Debtors as Part of the Settlement of a Collection Lawsuit

This Policy Statement supersedes and replaces Policy Statement 2007-1. Pursuant to Idaho Code § 26-2229A(3), permittees under the Idaho Collection Agency Act (Act) are prohibited from collecting, or attempting to collect, any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses are:

- a. Expressly authorized by statute;
- b. Allowed by court rule against the debtor;
- c. Judicially determined; or
- d. Are provided for in a written form agreement, to be signed by both the debtor and the permittee, and which has the prior approval of the Director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses.

The Department has received several inquiries concerning its interpretation of Idaho Code § 26-2229A(3)(d). The Department has also received several written form agreements submitted for approval by permittees under Idaho Code § 26-2229A(3)(d). Recognizing that it is in the public interest to facilitate mutually agreed-upon settlements of collection lawsuits, and to guide permittees in their compliance with Idaho Code § 26-2229A(3)(d), the Department issues this Policy Statement 2007-6.

If a permittee meets each of the following three (3) requirements in the settlement of a collection lawsuit, the Department will deem the agreed-upon settlement approved under Idaho Code § 26-2229A(3)(d), thus enabling permittees under the Act to enter into prejudgment settlement agreements in which permittees and debtors may mutually agree upon settlement terms that may include interest or other charges, fees, or expenses incidental to the debtor's principal obligation.

1. Evidence of the settlement agreement must be in a writing delivered to the debtor by the permittee and available for the Department's review in the debtor's file maintained by the permittee;
2. The settlement amount may not exceed the total of, (i) the amount of the principal obligation, (ii) court filing fees, (iii) accrued interest, and (iv) actually incurred third-party costs, including attorney fees as permitted by law; and
3. The settlement amount may only include the items set forth in paragraph 2, above, and may not exceed amounts permitted by law, calculated as of the settlement date.

It will not be necessary for permittees to submit written settlement agreements to the Department for approval. However, permittees must maintain sufficient records to document compliance with all three (3) of the requirements set forth above to the satisfaction of the Department. The record retention requirements of the Act apply to all such documentation.

Dated this _____ day of December, 2007

Gavin M. Gee
Director, Idaho Department of Finance